ity view which imputes the negligence of the parent to a child *non sui juris;* for, although technically the recovery is solely for the use of the child,[11] practically the negligent parent is sole beneficiary. For a similar reason, where a wife sues with her husband joined for conformity, his right to the damages is reason for imputing his negligence to her.[12] And conversely, it should not be imputed where she recovers independently.[13]

At common law the parent or husband has an independent action for torts committed against his minor child or his wife, to which his own negligence is, of course, a bar.[14] But, as he is seeking to recover for injury to an interest of his own — an interest quite distinct from that which the person injured has in himself, and as the law allows recovery against either of two joint tort-feasors, it seems contrary to principle or policy to impute to him the negligence of the person injured.[15] The authorities, however, do not accept this view, and apparently sanction a third rule of imputed negligence to the effect that when A sues B for an injury done to C, the negligence of C will be imputed to A.[16]

THE MORTGAGOR'S RIGHT TO AN ACCOUNT FOR RENTS AND PROFITS. — In those states which retain the English theory of mortgage, a payment or tender on the law day automatically revests title in the mortgagor.[1] As a matter of principle tender alone, being ineffective to extinguish the debt, should not have this effect. Nor should payment at any time other than the law day; for, although a personal satisfaction between the parties, such a payment is not a proper performance of the condition in the conveyance. By the weight of authority, however, payment at any time before maturity revests the title.[2] Where the lien theory of mortgage prevails, a natural result of the fusion of law and equity on which this conception is based is, that payment of the debt either before or after the law day releases the mortgagee's lien.[3] Some courts have gone further in holding that a tender after maturity and before foreclosure releases the lien although it does not extinguish the debt.[4] But these decisions are against the weight of authority,[5] and are clearly unjustifiable; for even in equity the lien subsists until the debt has been actually paid.[6]

---

ing that the law overlooks the nominal plaintiff for the beneficiary, or that it imputes negligence from the beneficiary to the plaintiff under our second rule, is immaterial.

[11] BEACH, CONTRIBUTORY NEGLIGENCE, 182.

[12] Pennsylvania R. R. Co. *v.* Goodenough, 55 N. J. L. 577, 587.

[13] Atlanta, etc. Ry. *v.* Gravitt, 93 Ga. 369.

[14] Bellefontaine Ry. Co. *v.* Snyder, 24 Oh. St. 670. [The child was allowed to recover for injuries to herself.]

[15] BISHOP, NON-CONTRACT LAW, § 584. Especially under modern statutes enlarging the wife's independence. Honey *v.* Chicago, etc. Ry. Co., 59 Fed. 423. (Reversed.)

[16] Kennard *v.* Burton, 25 Me. 39; Winner *v.* Oakland Township, 158 Pa. St. 405, 410; Chicago, etc. Ry. Co. *v.* Honey, 63 Fed. 39, reversing an able decision *contra* in 59 Fed. 423.

[1] See Shields *v.* Lozear, 34 N. J. L. 496, 504.

[2] Burgaine *v.* Spurling, Cro. Car. 283; Flye *v.* Berry, 181 Mass. 442. But see Watson *v.* Wyman, 161 Mass. 96.

[3] See Shields *v.* Lozear, *supra.*

[4] Kortright *v.* Cady, 21 N. Y. 343; Caruthers *v.* Humphrey, 12 Mich. 270.

[5] Shields *v.* Lozear, *supra.* See 18 AM. L. REG. N. S. 182 note; 16 HARV. L. REV. 526.

[6] Tuthill *v.* Morris, 81 N. Y. 94.

Although under the title theory some courts, by denying the mortgagee's right to possession until default by the mortgagor,[7] illogically say in effect that a deed which purports to pass title at once does not do so until default, yet the general law is, that by reason of his legal title such a mortgagee acquires the right to immediate possession.[8] On the other hand, by the lien theory a mortgagee has no enforceable right to possession. When, however, he has once obtained lawful possession he cannot be ousted except by redemption.[9] Under both theories the mortgagee in possession must account for rents and profits.[10]

Where the mortgagee has the legal title the mortgagor's right to an account is purely equitable. It is an incident to the equity of redemption,[11] and consequently no longer exists when the mortgage has been extinguished.[12] Unquestionably the receipt of rents and profits does not, in either form of mortgage, amount to a legal satisfaction of the debt. Accordingly, there can be no garnishment of a mortgagor's right to an account;[13] and the mortgagor, in an action of ejectment, cannot show satisfaction of the debt by the mortgagee's receipt of rents and profits.[14] Even under a statute providing for the revesting of title upon payment of the mortgage debt, the receipt of rents and profits to this amount is not deemed a payment.[15] It is said that the mortgagee in possession takes the rents and profits in the character of a *quasi*-trustee or bailiff for the mortgagor;[16] and their receipt is treated as in the nature of an equitable set-off to the amount due on the mortgage debt.[17] A mortgagee in rightful possession is always entitled to reimbursement for improvements, taxes, repairs, etc.; and until an accounting has been taken in a court of equity the debt is unsatisfied and the position of the parties unchanged.[18] But where in a suit for foreclosure the mortgagor asks for an accounting, he is clearly entitled to have the amount received in rents and profits set off against the mortgage debt. *Hoye* v. *Bridgewater*, 118 N. Y. Supp. 951 (Sup. Ct., App. Div.).

LEGAL EFFECT OF AN INSTRUMENT AS AFFECTED BY THE PAROL EVIDENCE RULE. — It is a general rule that when any judgment, disposition of property, agreement, or other undertaking has been reduced to writing, and is evidenced by a document or a series of documents, the contents of such documents cannot be contradicted, altered, added to, or varied by parol or extrinsic evidence.[1] This rule is founded on the presumption that all terms and conditions have been integrated in the document. It is

---

[7] Barnett *v.* Timberlake, 57 Mo. 499.
[8] Gilman *v.* Wills, 66 Me. 273.
[9] Becker *v.* McCrea, 94 N. Y. Supp. 20.
[10] See Hubbell *v.* Moulson, 53 N. Y. 225; Dawson *v.* Drake, 30 N. J. Eq. 601.
[11] Seaver *v.* Durant, 39 Vt. 103.
[12] Wilcox *v.* Cheviott, 92 Me. 239.
[13] Toomer *v.* Randolph, 60 Ala. 356.
[14] Green *v.* Thornton, 96 Pac. 382 (Cal.).
[15] Farris & McCurdy *v.* Houston, 78 Ala. 250.
[16] See Hubbell *v.* Moulson, *supra*.
[17] See Green *v.* Thornton, *supra*.
[18] See Hubbell *v.* Moulson, *supra*.

[1] Angell *v.* Duke, 32 L. T. R. N. S. 320.